

V I R G I N I A:

BEFORE THE VIRGINIA GAS AND OIL BOARD

IN RE:

Appeal of the State Gas and Oil Inspector's Decision IFFH-6092 dated December 29, 1992 in the matter of Jacqueline Sykes vs. Oxy USA, Inc., Well CBM-S15B, Permit Number 2212, Docket Number VGOB-93/02/16-0324

This cause came on for hearing before the Virginia Gas and Oil Board ("Board") this 16th day of February, 1993, upon Jacqueline Sykes' Notice of Appeal of the Virginia Gas and Oil Inspector's ("Inspector") decision IFFH-6092 dated December 29, 1992, finding and holding that Jacqueline Sykes, a claimant to the surface estate, (1) pursuant to § 45.1-361.30 of the Code of Virginia, 1950 as amended ("Code") was entitled to receive notice of Oxy USA, Inc.'s application under §45.1-361.29 of the Code for Well Work Permit No.2212 ("Permit") for Well CBM-S15B ("Well"); (2) that pursuant to § 45.1-361.30.D. of the Code said Jacqueline Sykes therefore had standing to object to the issuance of the Permit; (3) that said Jacqueline Sykes was not given notice of Oxy USA, Inc.'s application for the Permit and therefore had not been afforded an opportunity to object to the issuance of said permit; therefore, (4) Jacqueline Sykes was granted fifteen (15) days from the date of receipt of the Inspector's Decision to file her objections as required by 45.1-361.35 of the Code.

Jacqueline Sykes appeared at the hearing through her father, Jack Sykes pro se. Oxy USA, Inc. appeared at the hearing and was represented by Timothy E. Scott of the law office of McKinnis & Scott. Sandra B. Riggs, Assistant Attorney General was present to advise the Board.

FINDINGS OF FACT

1. On September 23, 1992 OXY USA, Inc. ("Oxy") filed with the Virginia Division of Gas and Oil its application for a permit for a new coalbed methane well pursuant to §45.1-361.29.B. of the Code with respect to an operation on the Big Vein 128 tract(s) of 693.64 acres, more or less, in the Garden District, Buchanan County, Virginia ("Well"). Oxy's application indicated that the surface owner was Jesse Childress and that said surface owner was given notice of the application.

2. The Virginia Division of Gas and Oil received no objections to Oxy's permit application, and on November 10, 1992 Oxy was issued Permit No. 2212, VA File No. BU-0367 for the Well.

3. By letter dated December 2, 1992, Ms. Sykes advised the Inspector that she claimed ownership of the surface estate, that she had not been given proper notice of the application, and she stated her objections to the Well Permit.

4. In response to Ms. Sykes' December 2, 1992 letter, by notice dated December 11, 1992 the Inspector scheduled an informal fact finding hearing to be held December 22, 1992 pursuant to §45.1-361.35.G of the Code to consider whether Ms. Sykes was in fact a surface owner entitled to receive notice of the application and thus had standing to object to the issuance of the permit for the Well.

5. By letter dated December 11, 1992 Ms. Sykes' attorney, Robert T. Copeland of the firm of Copeland, Molinary, Bieger & Leonard, P.C., filed further objections with the Inspector.

6. The Informal Fact Finding Hearing was held on December 22, 1992 at which Timothy E. Scott of the firm of McKinnis and Scott represented Oxy, and Thomas Antinucci of the firm of Copeland, Molinary, Beiger & Leonard, P.C. represented Ms. Sykes.

7. The Inspector issued his decision in this matter on December 29, 1992 recognizing that there remained a title dispute as to the surface ownership of the permit area, and without adjudicating said title dispute, The Inspector found that Ms. Sykes had put on evidence to support of her claim of surface ownership of property which may be a portion of the permit area, and that as a claimant she should be given notice of the application and afforded standing to object to same. Since Ms. Sykes had already received notice of the Permit application, the Inspector granted to Ms. Sykes the fifteen (15) day period provided by §45.1-361.35 to file any further objections she might have.

8. Ms. Sykes filed no further objections with the Inspector, but instead filed a Notice of Appeal of the Inspector's Decision with the Board.

CONCLUSIONS OF LAW

The Board is of the opinion that:

1. Ms. Sykes had received the required notice prior to the Informal Fact Finding Hearing, and had already filed with the Inspector the objections upon which she intended to rely, as evidenced by her letter dated December 2, 1992 and by her attorney's letter dated December 11, 1992; therefore, Ms. Sykes is a person aggrieved by the decision of the Inspector with respect to the hearing of the objections raised in the letters of December 2, 1992 and December 11, 1992 in that the Inspector's Decision failed to rule on said objections as requested or to grant the requested relief.

2. Ms. Sykes is not a person aggrieved by the decision of the Inspector with respect to the notice and standing issues, in that the Inspector ruled in her favor by finding that she was entitled to notice and therefore had standing pursuant to §45.1-361.35 to object to the permit application. Further, in an abundance of caution, the Inspector gave Ms. Sykes fifteen (15) days from the date of the Informal Fact Finding Hearing within which to file objections that complied with the requirements of §45.1-361.35.B.

3. The Board finds that the objections raised by Ms. Sykes in her letter of December 2, 1992 and her attorney's letter of December 11, 1992 were:

- a. that the applicant had no right of entry upon her surface estate
- b. that the well will cause damage to the value of her surface estate
- c. that the action of the applicant and the Board are an unconstitutional taking without due process
- d. that she had not been given notice of the application within the time specified in the statute
- e. that environmental harm will be done to the property

4. The Board finds that Ms. Sykes objections were unsupported by the evidence and do not meet the criteria for objections which may be raised by surface owners as more particularly set forth in §45.1-361.35.B. of the Code which states:

"B. The only objections to permits or permit modifications which may be raised by surface owners are:

1. The operations plan for soil erosion and sediment control is not adequate or not effective;

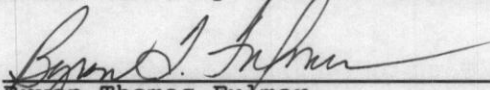
2. Measures in addition to the requirements for a well's water-protective string are necessary to protect fresh water-bearing strata; and
3. The permitted work will constitute a hazard to the safety of any person."

Accordingly, this Board affirms the Inspector's decision that Ms. Sykes was entitled to notice, and therefore, had standing to object to the permit. This Board further finds that the Inspector's decision did not rule on the objections to the permit raised by Ms. Sykes, in her letter of December 2, 1992 and/or by her attorney's letter of December 11, 1992, and in that regard, having heard evidence pertaining to same, the Board finds that said objections are unsupported by said evidence and do not meet the criteria for objections which may be raised by surface owners as more particularly set forth in §45.1-361.35.B of the Code. Further, the Board finds no grounds to support the revocation of Permit #2212 issued to OXY USA, Inc. for Coalbed Methane Well S15B, and therefore denies the relief requested.

Done and executed this 9th day of March, 1993, by a majority of the Virginia Gas and Oil Board.

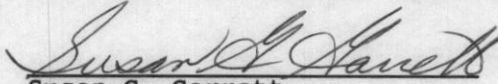

Chairman, Benny R. Wampler

Done and performed this 9th day of March, 1993, by Order of the Board.


Byron Thomas Fulmer
Principal Executive to the Staff
Virginia Gas and Oil Board

STATE OF VIRGINIA)
COUNTY OF WISE)


Acknowledged on this 9th day of March, 1993, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Susan G. Garrett
Notary Public

My commission expires 7/31/94

STATE OF VIRGINIA)
COUNTY OF WISE)

Acknowledged on this 9th day of March, 1993, personally before me a notary public in and for the Commonwealth of Virginia, appeared Byron Thomas Fulmer, being duly sworn did depose and say that he is Principal Executive to the Staff of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Susan G. Garrett
Notary Public

My commission expires 7/31/94